IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6544 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SALMABANU MOHMED IMTIYAZ NARMAWALA

Versus

PLATINIUM COOPERATIVE HOUSING SOCIETY LTD.

Appearance:

1. Special Civil Application No. 6544 of 2002

MR SHIRISH JOSHI for Petitioner No. 1-4

MR RAVINDRA SHAH for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 3-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 12/08/2002

ORAL JUDGEMENT

1. This Court had passed the order on 18-7-2002 by issuing notice for final disposal. All the respondents

are served by direct service as per the statement made by Mr. Joshi learned advocate Mr. Ravindra Shah is appearing for the respondent no. 1. The other respondents have not chosen to appear in the matter. The matter is considered for final disposal as per the last order.

2. The contention of the petitioner is that the petitioner has purchased the property situated in Plot No. 23 of the respondent no. 1 society. The contention of the respondent no. 2 is that the petitioner has purchased the said property without permission of the respondent no. 1 society. The respondent no. 1 filed Lavad suit No. 1292 of 1996 before the Registrar, Board of Nominees on 27-8-1996. In the said Lavad Suit, the petitioner is not impleaded as a party. The prayers made in the Lavad Suit are that the defendant no. 1 i.e Hasamali Mahmadali Katchhi has no authority to transfer the membership. In the suit it is also prayed for declaration that the Hajimahmad Hajiyusuf Patel and Hajimusa Hajiahmad Patel who are the defendants no. 2 and 3 therein have not authority to be admitted as members or they are not eligible to be admitted as members. Another prayer in the said Lavad Suit is that without permission of the respondent Society if any transfer is made, then the said transfer is null and void. It is also further prayed in the said Lavad Suit that the defendants no. 2 and 3 be restrained from making any disturbance or making construction over plot no. 23 of the respondent 1 society.

3. The perusal of the aforesaid prayers made in the aforesaid Lavad Suit clearly goes to show that it would affect the petitioner herein because the petitioner herein is a person who has purchased the property from the original defendants no. 2 and 3 who had purchased the said property from the original defendant no. 1. It may be the contention of the respondent society that the transaction of purchase is illegal or null and void etc. However, when the reliefs prayed in aforesaid Lavad Suit are directly affecting to the rights of the petitioner or if the reliefs as prayed for in the aforesaid Lavad Suit are granted, the petitioner would be directly affected by the outcome of the lavad suit. Therefore, it cannot be said that the petitioner is not a necessary party to the aforesaid lavad suit proceedings. The petitioner had applied for being impleaded as a party vide exh. 22. However, the learned Board of Nominees rejected the said application merely on the ground that since the petitioner did not purchase the property after obtaining necessary permission from the respondent no. 1 Society,

the petitioner cannot be allowed to be impleaded as a party. The Tribunal while passing the order in Revision Application No. 85 of 2001 has also overlooked the important aspect of the case that as the prayers made in the aforesaid Lavad Suit, if granted would adversely affect the petitioner here, the petitioner was necessary and proper party to the lavad suit proceedings. In spite of the same, the Tribunal has rejected Revision Application No. 85 of 2001 by observing that the petitioner is not a necessary party.

4. On perusal of the order passed by the learned Board of Nominees which is confirmed thereafter by the Tribunal ultimately, shows that the approach the learned Board of Nominees as well as Tribunal on the question of impleading the petitioner as a party is not only erroneous and illegal but if it is allowed to stand would cause great injustice to the petitioner. Mr. Shah learned advocate for the respondent no.1 society submitted that the petitioner can make an application or request to the Board of Nominees for deciding the both the suits together. He also submitted that the respondent no. 1 society has no objection in declaring before the Court that they will not withdraw the proceedings of Lavad Suit No. 1292/96. He, further submitted that when the petitioner has purchased the property without permission of the respondent no. 1 society, the petitioner cannot get any right to be impleaded as a party. I am afraid that such a contention can be accepted. It is a basic principle that if any relief is sought for by any party or litigant while approaching any Court, it is necessary that such party or litigant who is going to be affected by the outcome of the litigation must be joined as a necessary party. Apart from that, even if during the pendency of the litigation any subsequent transfer or change takes place then that change will be required to be stated in the original suit proceedings and the subsequent transferee or property holder is required to be impleaded as party.

the original property holder would be authorized to hold the property in question.

5. Such principle is accepted with a view to avoid multiplicity of the proceedings and is in consonance with the principle of natural justice.

6. Considering the above, I am of the view that the order passed by the Registrar, Board of Nominees as well as the order passed by the Tribunal cannot be allowed to stand as the said orders are illegal on the face of it.

7. In the result, the order passed by the Registrar, Board of Nominee dated 8-2-2001 and the order passed by the Tribunal dated 19-2-2002 below exh.22 in Revision Application No. 85 of 2001 are hereby quashed and set aside. The petitioner is allowed to be impleaded as a party in the proceedings of Lavad Suit No. 1292 of 1996 pending before the Registrar, Board of Nominees, Vadodara. This petition is allowed to that extent. Rule is made absolute accordingly, with no order as to cost.

(Jayant Patel, J.)

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/JVSatwara/